

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                               |   |                         |
|-------------------------------|---|-------------------------|
| DIGITAL MEDIA SOLUTIONS, LLC, | ) | CASE NO. 1:19-cv-145    |
|                               | ) |                         |
| Plaintiff,                    | ) | JUDGE DAN AARON POLSTER |
|                               | ) |                         |
| v.                            | ) | MAGISTRATE JUDGE        |
|                               | ) | THOMAS M. PARKER        |
| SOUTH UNIVERSITY OF OHIO,     | ) |                         |
| LLC, <i>et. al.</i> ,         | ) |                         |
|                               | ) |                         |
| Defendants.                   | ) |                         |

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SECOND INTERIM APPLICATION OF  
WHITMER & EHRMAN LLC,  
MCCARTHY LEBIT CRYSTAL & LIFFMAN CO., LPA,  
DIAMOND MCCARTHY LLP AND FLETCHER, HEALD & HILDRETH,  
ATTORNEYS FOR MARK E. DOTTORE, RECEIVER, FOR  
COMPENSATION AND REIMBURSEMENT OF EXPENSES

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This Second Interim Application for Compensation and Reimbursement of Expenses (“**Fee Application**”) is filed by Whitmer & Ehrman LLC (“**W&E**”), for itself and on behalf of McCarthy, Lebit, Crystal & Liffman Co., LPA, (“**McCarthy**”), Diamond McCarthy LLP (“**Diamond**”) and Fletcher, Heald & Hildreth (“**Fletcher**”) (together the “**Attorneys**”) as their application for approval of compensation for services rendered (the “**Compensation**”), and reimbursement of out-of-pocket expenses (the “**Expenses**”) as counsel for Mark E. Dottore, the duly appointed and acting Receiver in this action (the “**Receiver**”), for the period commencing May 11, 2019, through and including December 31, 2019 (the “**Application Period**”) in the following amounts:

|   | Compensation | Reim/Expenses |
|---|--------------|---------------|
| Whitmer & Ehrman LLC                      | \$308,250.00 | \$643.84      |
| McCarthy Lebit Crystal & Liffman Co., LPA | \$335,907.50 | \$911.45      |
| Diamond McCarthy LLP                      | \$11,065.00  | \$485.34      |
| Fletcher, Heald & Hildreth                | \$5,745.00   | \$0.00        |

This Fee Application is submitted pursuant to the Amended Order Appointing Receiver [Docket No. 150] (the “**Receiver Order**”)<sup>1</sup> Paras. 18 through 22.

In support of this Fee Application, W&E says as follows:

1. This Court appointed the Receiver on January 18, 2019, on an emergency basis, pursuant to its Order Appointing Receiver [Dkt. No. 8] (the “**Initial Receiver Order**”). On January 25, 2019, after discussions with the secured lenders of the Receivership Entities, the Receiver filed his *Motion of Mark E. Dottore, Receiver for Entry of Order Clarifying Order Appointing Receiver* [Docket No. 12], pursuant to which the Court entered the Clarifying Order, *nunc pro tunc* to the entry of the Initial Receiver Order. [Dkt. No. 14].

2. On February 25, 2019, the Receiver filed his *Motion of Mark E. Dottore Receiver for Entry of Amended Order Appointing Receiver*, seeking the entry of an Amended Order Appointing Receiver (the “**Amended Receiver Order**”), incorporating changes requested by persons with significant interests in the Receivership Entities and the operations of the receivership proceedings, including government entities and lenders. On March 13, 2019, this Court entered the

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<sup>1</sup> Capitalized terms not defined in this Fee Application shall have the meanings given to them in the Receiver Order.

Amended Order Appointing Receiver [Dkt. No. 150]. The various iterations of the orders appointing the Receiver shall be referred to herein as the “**Receiver Order**,” when the differences between the Initial Receiver Order, the Clarifying Order and the Amended Receiver Order are insignificant for the purposes of this Application.

3. The relief requested in this Fee Application is governed by Fed. R. Civ. P. 66, Rule 66.1(c) and (d) of the Local Rules for the United States District Court for the Northern District of Ohio (the “**Local Rules**”), federal common law and the Receiver Order.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events giving rise to this action took place in this judicial district and a substantial part of the property that is the subject of the action is situated in this district.

5. On January 21, 2019, the Receiver filed an Application for Authority to Retain and Employ W&E as Attorneys for the Receiver [Docket No. 9]. On January 24, 2019, this Court granted the Motion.

6. By their First Interim Fee Application, filed May 16, 2019, W&E requested allowance and payment of compensation for all services rendered and reimbursement of all out-of-pocket Expenses for the period commencing January 18, 2019 through and including May 10, 2019, in the total amount of \$614,389.21. Of this amount, \$610,051.70 was requested as and for compensation for services and \$4,337.51 was requested for the reimbursement of out-of-pocket Expenses.

7. On December 6, 2019, this Court entered an order (the “**December 6<sup>th</sup> Order**”) authorizing the Receiver a total of \$750,000 to pay all legal fees of his counsel. As such, the Receiver paid 68.68% to each firm. W&E was paid a total amount of \$421,971.00. An unpaid balance in the amount of \$192,418.21 remains.

8. W&E’s fee invoices commence May 11, 2019 and continue through December 31, 2019. By this Fee Application, W&E requests allowance and payment of compensation for all W&E Compensation rendered during the Application Period in the amount of \$308,250. W&E also applies for reimbursement of Expenses incurred by W&E during the Application Period in the amount of \$643.84.

9. The total number of hours expended by W&E during the Application Period was 822 hours at a blended billing rate of \$375 per hour. The value of these services has been computed at the rates W&E customarily charges for similar services provided to other similar clients.

10. Exhibit A to this Fee Application summarizes the Compensation and Expenses requested by W&E with the total amount of fees charged by W&E during the Application Period. Exhibit A identifies the person performing the services, the person’s billing rate, and the hours spent on the matter. Exhibit A to this Fee Application also contains a detailed summary of services performed. A declaration of Mary Whitmer is included in Exhibit A.

11. On January 21, 2019, the Receiver filed an Application for Authority to Retain and Employ McCarthy, Lebit, Crystal & Liffman Co., LPA as Special

Counsel for the Receiver [Docket No. 10]. On January 24, 2019, this Court granted the Motion.

12. By their First Interim Fee Application, Filed May 16, 2019, McCarthy requested allowance and payment of compensation for all services rendered and reimbursement of all out-of-pocket Expenses for the period commencing January 18, 2019 through and including May 10, 2019, in the total amount of \$457,407.45. Of this amount, \$450,895.50 was requested as and for compensation for services and \$6,511.95 was requested for the reimbursement of out-of-pocket Expenses.

13. In the Court's December 6<sup>th</sup> Order authorizing the Receiver \$750,000 to pay all legal fees of his counsel, the Receiver paid to McCarthy 68.68% of the allowed fee amount and Expenses totaling \$314,156. An unpaid balance in the amount of \$143,251.45 remains.

14. McCarthy's fee invoices commence May 11, 2019 and continue through December 31, 2019. By this Fee Application, McCarthy requests allowance and payment of compensation for all McCarthy Compensation rendered for the Application Period in the amount of \$335,907.50. McCarthy also applies for reimbursement of Expenses incurred by McCarthy during the Application Period in the amount of \$911.45.

15. The total number of hours expended by McCarthy during the Application Period was 803.70 hours at a blended billing rate of \$417.95 per hour. The value of these services has been computed at the rates McCarthy customarily charges for similar services provided to other similar clients.

16. Exhibit B to this Fee Application summarizes the Compensation and Expenses requested by McCarthy with the total amount of fees charged by McCarthy during the Application Period. Exhibit B identifies the person performing the services, the person's billing rate, and the hours spent on the matter. Exhibit B to this Fee Application also contains a detailed summary of services performed. The Declaration of Robert Glickman is included in Exhibit B.

17. On January 31, 2019, the Receiver filed an Application to Retain Diamond McCarthy as attorney for the Receiver in California [Dkt. No. 21]. On February 8, 2019, the Court granted the Motion [Dkt. No. 37].

18. By their First Interim Fee Application, Filed May 16, 2019, Diamond requested allowance and payment of compensation for all services rendered and reimbursement of all out-of-pocket Expenses for the period commencing January 18, 2019 through and including May 10, 2019, in the total amount of \$17,186.55. Of this amount, \$16,723 was requested as and for compensation for services and \$463.55 was requested for the reimbursement of out-of-pocket Expenses.

19. In the Court's December 6<sup>th</sup> Order authorizing the Receiver \$750,000 to pay all legal fees of his counsel, the Receiver paid to Diamond 68.68% of the allowed fee amount and Expenses totaling \$11,812. An unpaid balance in the amount of \$5,374.55 remains.

20. Diamond's fee invoices commence May 14, 2019, and continue through December 31, 2019. By this Fee Application, Diamond requests allowance and payment of compensation for all Diamond Compensation rendered for the

Application Period in the amount of \$11,065. Diamond also applies for reimbursement of Expenses incurred by Diamond during the Application Period in the amount of \$485.34.

21. The total number of hours expended by Diamond during the Application Period was 19.50 hours at a blended billing rate of \$567.43 per hour. The value of these services has been computed at the rates Diamond customarily charges for similar services provided to other similar clients.

22. Exhibit C to this Fee Application summarizes the Compensation and Expenses requested by Diamond with the total amount of fees charged by Diamond during the Application Period. Exhibit C identifies the person performing the services, the person's billing rate, and the hours spent on the matter. Exhibit C to this Fee Application also contains a detailed summary of services performed and a declaration of Kathy B. Phelps.

23. On September 26, 2019, the Receiver filed an Application to Retain Fletcher, Heald & Hildreth as attorneys to address the Receiver entities' Educational Broadband Service license WNC980 [Dkt. No. 426]. On October 11, 2019, the Court granted the Motion [Dkt. No. 435].

24. Fletcher's fee invoices commence October 15, 2019, and continue through December 9, 2019. By this Fee Application, Fletcher requests allowance and payment of compensation for all Fletcher Compensation rendered for the Application Period in the amount of \$6,032.50. No Expenses were incurred by Fletcher during the Application Period.

25. The total number of hours expended by Fletcher during the Application Period was 17.2 hours at a blended billing rate of \$350.73 per hour. The value of these services has been computed at the rates Fletcher customarily charges for similar services provided to other similar clients.

26. Exhibit D to this Fee Application summarizes the Compensation and Expenses requested by Fletcher with the total amount of fees charged by Fletcher during the Application Period. Exhibit D identifies the person performing the services, the person's billing rate, and the hours spent on the matter. Exhibit D to this Fee Application also contains a detailed summary of services performed and a declaration of Susan A. Marshall.

27. The Receiver has reviewed this Fee Application and exhibits. The Receiver states that he believes that all of the services described in the attached exhibits were necessary for him to carry out his duties pursuant to the Receiver Order. A copy of this Fee Application and its Exhibits will be served upon all persons on the Court's ECF service list.

**WHEREFORE**, the Receiver respectfully requests that this Court enter an order: (i) approving, on an interim basis, this Fee Application for services rendered for the Application Period for (i) Whitmer & Ehrman LLC in the amount of \$308,250.00 for Compensation and \$643.84 in Expenses for a total of \$308,893.84 plus its unpaid balance of \$192,418.21 for a total requested award of \$501,312.05; (ii) McCarthy Lebit Crystal & Liffman in the amount of \$335,907.50 for Compensation and \$911.45 in Expenses for a total of \$336,818.95 plus its unpaid



balance of \$143,251.45 for a total requested award of \$480,070.40; (iii) Diamond McCarthy in the amount of \$11,065 for Compensation and \$485.34 in Expenses for a total of \$11,550.34 plus its unpaid balance of \$5,374.55 for a total requested award of \$16,924.89; (vii) Fletcher, Heald & Hildreth in the amount of \$6,032.50 for Compensation and \$0.00 in Expenses for a total of \$6,032.50; and (viii) granting any further relief as the Court deems proper and just.

Dated: February 28, 2020

Respectfully submitted,

/s/ Mary K. Whitmer

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